LANDLORD AND TENANT—RIGHT OF LANDLORD TO EXPEL TENANT HOLDING OVER—DAMAGES.—SAROS v. AVENUE THEATER CO., 137 N. W. (MICH.), 559.—*Held,* that where landlord injects formaldehyde into room of tenant holding over, he is liable in damages for injuries caused thereby.

The rule in most jurisdictions in the United States is that, where a tenant unlawfully holds over, the landlord has a right to *peaceably* enter and expel the tenant, using no more force than is necessary. *Stearns v. Sampson,* 59 Me., 568; *Hyatt v. Wood,* 4 Johns, 150; *Gillespie v. Beecher,* 85 Mich., 347. In Massachusetts it was held that, where a landlord *forcibly* entered and *forcibly* expelled the tenant, he was not liable civilly for the assault, unless he used more force than was necessary in the expulsion. *Low v. Elwell,* 121 Mass., 309. In New Jersey the landlord may take possession by any means short of personal violence, remove goods, and then protect his possession by force. *Todd v. Jackson,* 26 N. J. L., 525. But in Kansas a landlord is liable in damages to such a dispossessed tenant for injury occasioned by forcible entry. *Whitney v. Brown,* 90 Pac., 277. In Vermont, Illinois, Connecticut and other States, statutes of forcible entry and detainer have much abridged the landlord's right according to the prevalent American rule. In *Larkin v. Avery,* 23 Conn., 304, it was held that the landlord must resort to legal remedy to get possession. Where expulsion by force is allowed the rule is to require the landlord to choose such a means as will effect the end without inflicting wanton or unnecessary injury. This was the ground for the decision in *Huggins v. Bridges,* 29 Pa. Super. Ct., 82, where it was held that a landlord was liable in damages for injury caused by poisoning the atmosphere of the room by stopping up the chimney flue and forcing smoke into the room. The reason for the rule announced in the principal case is the same as that which requires one in abating a nuisance to do no more damage than is necessary and to choose means which are reasonably adapted to the end, and is in accord with the plain dictates of reason and justice.

LIMITATION OF ACTIONS.—MALICIOUS PROSECUTION—PENDENCY OF APPEAL.—LEVERING v. NATIONAL BANK OF MORROW COUNTY, 100 N. E., (OHIO), 323.—*Held,* that the right to sue for malicious prosecution of a civil action accrues upon the rendition in the Trial Court of a judgment for the defendant in the action complained of, and is barred by the statute of limitations if not brought within one year after such judgment, although a proceeding in error may have intervened.

This decision is at variance with the weight of authority which holds that pending an appeal the statutes will not run against matters which are still properly cognizable in the proceeding. *Patrick v. National Bank of Commerce,* 63 Neb., 200. Nor can it be reconciled with the general rule that an action for malicious prosecution cannot be maintained pending an appeal. *Nebenzahl v. Townsend,* 61 How. Pr. (N. Y.), 353; *Reynolds v. DeGeer,* 13 Ill. App., 113; *Griffith v. Ward,* 20 U. C. Q. B. (Canada), 31; since the essential element in an action for malicious prosecution is the acquittal of the defendant in the suit complained of; *Monroe v. Maples,* 1 Root (Conn.), 553; and the action cannot be maintained until the suit

complained of is terminated in favor of the defendant therein. *Daily v. Donath,* 100 Ill. App., 52; *Hays v. Blizzard,* 30 Ind., 457. The holding of the principal case would in many instances necessitate bringing the action for malicious prosecution while an appeal is pending, and, though the pending of an appeal might be a good reason for a stay of proceedings, *Dreyfus v. Aul,* 29 Neb., 191; *Rogers v. Mullins,* 20 Tex. Civ. App., 250; it seems useless to put the defendant in the alleged malicious prosecution to the expense of instituting proceedings, when by a subsequent decision of the Appellate Court he may lose the essential element of his action.

MASTER AND SERVANT—MASTER'S LIABILITY FOR INJURY TO SERVANT—RISKS ASSUMED.—H. D. WILLIAMS COOPERAGE CO. v. SAMS, 198 FED., 852.—*Held,* that a servant assumes only those extraordinary risks of his employment which he knows and appreciates or which are obvious, and not those which by the exercise of ordinary care, he should have known but did not.

The doctrine is well settled that a workman assumes the risks that are incidental to his employment. *Rummel v. Dilworth,* 131 Pa., 509. But it is recognized common law that a servant who has no knowledge, actual or constructive, of an extraordinary risk, is not chargeable with its assumption. *Labatt on Master and Servant,* Vol. 1, Sec. 274. But the servant is charged with knowledge if the danger is obvious. *Glenmont Lumber Co. v. Roy,* 126 Fed., 524. *Contra, Stiller v. Bohn Mfg. Co.,* 80 Minn., 1. And the master is not liable where knowledge of the danger is open alike to the master and servant and is incidental to the employment, *Murphy v. Edgar Zinc Co.,* 83 Kan., 627; except where the defect is discoverable only on strict investigation. *Miner v. Franklin County Tel. Co.,* 83 Vt., 311. In many States the liability is determined by statute, but there is a long line of cases that hold that a servant assumes not only such risks as would ordinarily be incidental to his employment, but also such as he could discover by the exercise of his opportunities for inspection. *Lehman v. VanNostrand,* 165 Mass., 233; *Perigo v. Chicago, etc., R. Co.,* 52 Iowa, 276. Or by the use of "ordinary care", *Sievers v. Peters Co.,* 151 Ind., 642; "reasonable care and skill", *W. U. Tel. Co. v. McMullen,* 58 N. J. L., 155; "ordinary observation or reasonable diligence", *Latremouville v. Bennington & R. R. Co.,* 63 Vt., 336. For a list of cases in point see 26 *Cyc.,* p. 1304, notes 17 and 20. In the view of the best authorities, the decision in the title case is too harsh on the master. The better view is that the servant must use some degree of care in any case.

NEGLIGENCE — DANGEROUS INSTRUMENTS — AUTOMOBILES. — PARKER V. WILSON, 60 So., (ALA.), 151.—*Held,* that automobiles are not to be classed with such highly dangerous agencies as dynamite or savage animals and are not to be regarded as dangerous *per se.*

The law takes notice that certain things are a source of extraordinary risk, and a man who exposes his neighbor to such risk is held liable for any consequent harm, not due to some cause beyond human foresight and